

HYPERION



August 18, 2012

[REDACTED]

Dear [REDACTED]

I hope this letter finds you well. The difficult times caused by the drought are a challenge for everyone who has ties with the agricultural business, including consumers, who will start feeling the effects this fall. We understand the pain this may be causing you.

We have been working diligently to push the Hyperion Energy Center forward in these difficult and uncertain economic times. We remain committed to overcoming the obstacles thrown at us by the Sierra Club and others. The Sierra Club's main tactic is to cause delays through lawsuits and appeals, and their lawsuit against our air permit is scheduled to be heard on Oct. 3<sup>rd</sup> by the South Dakota Supreme Court. We do not know how long it will take the Supreme Court to rule after that date, but we are looking at months as a minimum period of time.

Thus, it will be a challenge for Hyperion to start construction by March 15, 2013. We need to eliminate the Sierra Club's strategy of delay and stalling. We are asking landowners to consider the enclosed amendment to the option agreements. This amendment will extend the final option period in the contract as long as litigation exists against this project. During this time we will continue to pay annual option payments each August 31<sup>st</sup> and the purchase price will continue to appreciate each year at a very attractive rate.

I encourage you to give this proposal serious consideration. Hyperion needs all landowners to agree to this contract extension if we are move forward and overcome the opposition by the Sierra Club. We will be contacting you in the next few days to discuss this proposal.

Very truly yours,

Preston V. Phillips

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## SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT AND SUPPLEMENTAL AGREEMENT

This Second Amendment to Real Estate Purchase Agreement and Supplemental Agreement (the "Second Amendment") is entered into this \_\_\_\_ day of August, 2012, between \_\_\_\_\_, husband and wife (collectively, "Seller"), and **Elk Point Economic Development Corp.**, a South Dakota corporation ("Buyer").

### RECITALS

A. Buyer and Seller are parties to a Real Estate Purchase Agreement dated \_\_\_\_\_ (the "Purchase Agreement"), and a Supplemental Agreement dated \_\_\_\_\_ (the "Supplemental Agreement"), pursuant to which Buyer obtained an option to purchase the real estate described in Exhibit A hereto. The Purchase Agreement was filed for record with the Union County Register of Deeds on \_\_\_\_\_, in Book \_\_\_\_ at page \_\_\_\_.

B. Buyer and Seller are also parties to an Amendment to Real Estate Purchase Agreement and Supplemental Agreement dated August \_\_\_\_, 2010 (the "First Amendment"), and a Supplemental Amendment to Real Estate Purchase Agreement and Supplemental Agreement dated August \_\_\_\_, 2010 (the "First Supplemental Amendment"), pursuant to which Buyer was given the right to extend the term of the purchase option granted under the Purchase Agreement. The First Amendment was filed for record with the Union County Register of Deeds on \_\_\_\_\_, in Book \_\_\_\_ at page \_\_\_\_.

C. The parties now wish to further amend the agreements described above as set forth in this Second Amendment. Unless otherwise stated herein, all capitalized terms used in this Second Amendment shall have the meanings given in the Purchase Agreement and the First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Purchase Agreement, as previously supplemented and amended, as well as other good and valuable consideration, the parties agree as follows:

1. Extension. Section 2 of the Purchase Agreement, as previously modified by Section 1 of the First Amendment, is hereby amended to provide that the third additional Extended Term (which is described in the First Amendment to commence on September 1, 2012 and to expire at



11:59 p.m. on August 31, 2013) shall continue and extend, if Buyer elects to extend the Option for the third additional Extended Term, until the date that is one year after the Final Disposition (as defined below) of: (a) the case captioned *In Re In the Matter of the Prevention of Significant Deterioration Air Quality Permit Application of Hyperion Energy Center – Hyperion Refining LLC – Permit #28.0701 – PSD* currently pending before the South Dakota Supreme Court (the “Air Permit Proceeding”), and (b) any other action, suit or proceeding, whether civil, administrative, criminal, arbitratve or investigative, which is commenced prior to the expiration of the time period described in subsection (a) above and which in any way attempts to stop, hinder, delay or otherwise challenge the approval, development, construction or operation of the Hyperion Energy Center or any aspect thereof. For purposes of this section, the term “Final Disposition” means the final resolution of an action, suit or proceeding, including the exhaustion or expiration of all appeals and rights of appeal.

2. Extension Payment. In the event Buyer elects to extend the Option for the third additional Extended Term as referenced in Section 1 above, Buyer shall pay to Seller on August 31, 2013 and on August 31 of each subsequent year until the Option is exercised, not renewed, or released by Buyer (at which time such payments shall cease) a sum equal to the sum paid to Seller for the extension of the Option for the third Extended Term, as described in Section 2(c) of the Supplemental Agreement. Buyer shall receive as a credit against the Purchase Price all amounts paid by Buyer pursuant to this section, Section 2 of the Supplemental Agreement, and Section 2 of the First Supplemental Amendment.

3. Purchase Price Increase. In the event Buyer elects to extend the Option for the third additional Extended Term as referenced in Section 1 above, Seller shall receive an increase in the Purchase Price on August 31, 2013 and on August 31 of each subsequent year until the Option is exercised, not renewed, or released by Buyer (at which time such increases shall cease) in a percentage amount equal to the percentage increase described in Section 1 of the First Supplemental Amendment.

4. Release of Option. Buyer, at any time in its sole discretion, may execute and deliver to Seller a written statement releasing the Option, in which event all obligations of Buyer under the Purchase Agreement and all supplements and amendments thereto shall immediately terminate and cease.

5. No Other Modifications. Except as expressly stated herein, all terms of the Purchase Agreement, the Supplemental Agreement, the First Amendment, and the First Supplemental Amendment shall remain in full force and effect without alteration.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Real Estate Purchase Agreement and Supplemental Agreement the date written above.

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BUYER:

ELK POINT ECONOMIC DEVELOPMENT  
CORP.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Mailing Address:

106 West Pleasant,  
P.O. Box 280  
Elk Point, S.D. 57025-0280

STATE OF \_\_\_\_\_)  
:SS  
COUNTY OF \_\_\_\_\_)

On this the \_\_\_\_ day of August, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person(s) who is/are executed the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_)  
:SS  
COUNTY OF \_\_\_\_\_)

On this the \_\_\_\_ day of August, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person(s) who is/are executed the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 : SS  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of August, 2012, before me personally appeared Richard White, known to me to be the Authorized Agent of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
Legal Description of Real Estate

Legal Description	Estimated Acreage	Parcel Number